

Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Bureau / Office

In the Matter of)
George S. Flinn, Jr.)
v.)
Comcast)
Request for Mandatory Carriage of Television)
Station WFBD-DT, Destin, Florida)
(Facility ID 81669))
To: The Chief, Media Bureau)

CSR-8608-M

Docket No - 12-87

FILED/ACCEPTED

MAY 30 2012

Federal Communications Commission
Office of the Secretary

Reply to Opposition to Complaint

George S. Flinn, Jr. (hereinafter "Flinn"), by his attorney, hereby respectfully submits his Reply to the "Opposition to Complaint" (hereinafter "Opposition") filed by Comcast in the above-referenced proceeding. In support thereof, the following is shown:

1. Flinn is the licensee of WFBD-DT, a local commercial television broadcast station licensed to Destin, Florida.
2. In its Complaint, Flinn established that Comcast has improperly failed to carry WFBD-DT, Destin, Florida on its cable television system(s) serving the Mobile, AL-Pensacola (Ft. Walton Beach), Florida DMA.
3. In its Opposition, Comcast admits that it should be carrying WFBD-DT. The only justification Comcast advances for failing to carry WFBD-DT is that it believes that the Commission will act favorably upon a "Petition for Special Relief" which Comcast

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filed contemporaneously with its Opposition.

4. Flinn vigorously disputes the “factual” underpinnings of Comcast’s Petition for Special Relief and will timely respond thereto. Any reference by Comcast to the Petition for Special Relief in this proceeding is self-serving and by definition incomplete.¹

5. While Comcast does not dispute in its Opposition that WFBD-DT is entitled to immediate carriage (i.e., subject to any final determination rendered by the FCC or other appellate body regarding Comcast’s Petition for Special Relief), by implication it is seeking to delay carriage of WFBD-DT (i.e., for a period of time which will in all likelihood stretch for several years) in a bold assumption that the FCC will act favorably on its Petition for Special Relief. Again, Flinn respectfully disagrees. If the Commission sanctions Comcast’s implicit request that WFBD-DT be denied its rightful carriage while the FCC considers Comcast’s Petition for Special Relief, it is only WFBD-DT and its viewers who will be harmed.

6. As will be demonstrated in its filings in connection with Comcast’s Petition for Special Relief, it was never the intention of the FCC (in connection with market modifications) to hinder the development of fledgling stations. The basic goal of a market modification is to reform a station’s DMA to reflect the actual, long-term realities of said station’s reach, influence, economic market, etc.. It was never the intention of the Commission that market modification requests would be used by cable systems to

¹ For example, in its Opposition, Comcast claims that Flinn does not “provide signal coverage or other local service to any of the cable communities at issue”, a claim which, at a minimum, ignores the fact that WFBD-DT is carried by DISH, DIRECTV and Mediacom.

(a) deny carriage to a station and then (b) claim that said station does not have a market presence (because it is not carried by the very cable system which is denying access). It is respectfully submitted that a market modification in this case will be even more subject to scrutiny given the current situation whereby WFBD-DT's coverage and influence has been directly hampered by the digital transition, the current processing freeze and now the issues surrounding the broadband initiative (e.g., channel-sharing, channel repacking, etc.).

7. Since Flinn has promised to be responsible for the costs of delivering to Comcast's cable systems a good quality signal via alternative means, Comcast shall incur no material expenses in immediately commencing carriage of WFBD-DT's signal. Comcast's sole (implicit) argument against carriage would thus be that WFBD-DT is taking a channel away from another more deserving station or programmer. Comcast has made no showing that this is the case or that it does not have sufficient channel capacity to carry WFBD-DT. Along those lines, WFBD-DT is willing to be carried on any available Comcast channel (nearest the other local stations in the market) as opposed to its over-the-air channel until such time as a final determination may be rendered on the Petition for Special Relief.

8. Congress and the FCC have long recognized that stations in their DMA possess a presumption of carriage (see, e.g., Gray Television Licensee, Inc. [CSR-7007-A], Memorandum Opinion and Order, DA 06-1566, released August 4, 2006). In the matter at hand, two scenarios are in play. In scenario one, Comcast carries WFBD-DT (with no cost or prejudice to Comcast) until such time as a final determination may be rendered on the Petition for Special Relief. In scenario two, WFBD-DT, despite the

fact that the station (by Comcast's own admission) has the right to be carried, is denied carriage while the FCC and other appellate bodies consider the issues at hand.

Comcast has advanced absolutely no argument as to how immediate carriage of WFBD-DT would be harmful to its interests. Denial of immediate carriage of WFBD-DT would be patently unfair to WFBD-DT and the communities in question. As Comcast knows, WFBD-DT has recently changed its programming and is currently running localized, specialty programming which it believes will be enthusiastically embraced in the DMA (including the communities Comcast seeks to exclude). Moreover, it would establish bad precedent in that it would sanction current behavior which is admittedly wrong (i.e., denial of WFBD-DT's carriage) based upon the possibility that the FCC may grant redress in another proceeding (i.e., with respect to Comcast's Petition for Special Relief).

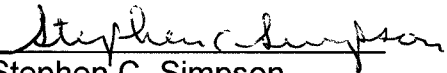
Conclusion

In its Opposition, Comcast admits that it should be carrying WFBD-DT. The only implicit justification Comcast advances for failing to carry WFBD-DT is that it believes that the Commission will act favorably upon its "Petition for Special Relief". Flinn respectfully submits that it will prevail in that proceeding and that any delay in carriage of WFBD-DT immediately would only harm WFBD-DT and its viewers. Comcast has made no showing whatsoever that a decision in the subject proceeding would in any material respect result in harm to Comcast. In short, if Comcast ultimately prevails in its Petition for Special Relief, it can then cease carriage of WFBD-DT. Absent facts not presented herein, WFBD-DT's presumption of carriage should be given dispositive weight.

Wherefore, based on the foregoing, it is respectfully requested (a) that a determination be rendered by the Commission that Comcast has failed to meet its must-carry obligations with respect to carriage of WFBD-DT and (b) that the Commission order Comcast, within 45 days of such order, to commence carriage of WFBD-DT, Destin, Florida on its above-referenced cable system(s) serving the Mobile, AL-Pensacola (Ft. Walton Beach), Florida DMA.

Respectfully submitted,

GEORGE S. FLINN, JR.

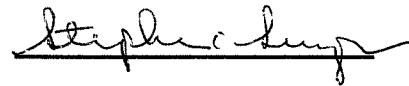
By: 
Stephen C. Simpson
His Attorney

1250 Connecticut Avenue, NW
Suite 200
Washington, D.C. 20036

Certificate of Service

I hereby certify that a copy of the foregoing document was this 4th day of May, 2012 sent by First Class U.S. mail, postage prepaid, to the following:

Steven J. Horvitz, Esq.
Frederick W. Giroux, Esq.
Davis Wright Tremaine, LLP
1919 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006

A handwritten signature in cursive script, appearing to read "Stephen J. Horvitz", written over a horizontal line.